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## CONGRESSIONAL RECORD — SENATE

October 21, 1988

## A TAX BREAK FOR THE RICH

The Tax Reform Act substantially raised capital gains rates. Rates that were 20 percent in 1986 now go as high as 33 percent. Combined with State taxes, the rates can now exceed 40 percent. Such a substantial increase is unwise.

Many people continue to think that a lower capital gains tax would be a tax break for the rich—that it would benefit only the top 1 percent or so of all taxpayers. The fact is, taxpayers earning below \$100,000 a year account for 45 percent of all capital gains.

In addition, those with higher incomes may be in that income bracket only because of a one-time capital gain. For instance, they may have sold a business or farm they spent a lifetime building. In the year before and the year after the sale, their income will be far lower. Simply put, the sale of a large asset kicks them into a higher bracket for 1 year and distorts their true economic status.

## "BLACK MONDAY"

A year ago this week, on "Black Monday," the stock market took a real dive—dropping over 500 points in 1 day. At the time, I shared a column by Warren Brooks with my colleagues. I agreed with Mr. Brooks that eliminating the capital gains exclusion may have played a role in bringing about the crash of the stock market. The huge increase in the capital gains tax rate had a profound impact on investor psychology, tilting it in favor of short-term investments. Because capital assets are taxed uniformly regardless of the holding period, investors are more likely to turn over investments quickly. There is no incentive to hold them for the long-term.

The current tax on capital gains severely undermines the attractiveness of long-term investments. As I noted in an earlier statement, under current law, long-term capital gains are overtaxed because much of these gains can be illusory. Gains investors realize frequently are due to inflation, not real growth, in reality, they do not increase the purchasing power of the investor. The current law treats a 1988 dollar like a 1978 dollar and like a 1928 dollar.

The effective tax on long-term assets can be staggering. When all forms of income are taxed alike, there is no incentive to take risks on an investment with long-term potential.

This policy has significant ramifications for the level of investment and entrepreneurial activity in this country. Rather than make investments in risky ventures, investors more and more will seek out investments that pay a current return but are less likely to experience dramatic productivity gains or job growth. In addition, entrepreneurs are less likely to gamble on starting new businesses when the tax consequences are so punitive.

## "INVESTING IN AMERICA'S FUTURE"

A high capital gains rate can only reduce our competitiveness, by curtail-

ing investment in existing businesses and the development of new businesses and products. This policy opens the way to more foreign investment, since most of our trading partners do not tax capital gains at all.

It is ironic that the long debate about trade and competitiveness did not shed light on the fact that the high capital gains rate has eliminated incentives for developing new technologies and investing in America's future. In short, a high capital gains rate is bad for our economy and bad for the well-being of the American people.

Mr. President, as the 100th Congress draws to a close, it is clear that reform of the tax treatment of capital gains will have to wait for a new administration and a new Congress. I am confident that, with the help of the members of the capital gains coalition, we have made progress in impressing upon our colleagues the importance of capital gains reform. I am committed to developing legislation that will encourage long-term investment and not unduly punish those who take risks and make sacrifices to build businesses, create jobs, and make America more competitive. I look forward to pursuing these goals in the 101st Congress.

## THE FUTURE OF THE INTELLIGENCE OVERSIGHT BILL

● Mr. COHEN. Mr. President, it is now apparent that the Democratic leadership in the House has decided not to bring the intelligence oversight bill—the so-called 48-hour bill—to a vote.

It is also apparent that the reason for this decision is to deny critics an opportunity to attack and further embarrass the Speaker for his recent statements.

So, ironically, we have the House majority, who generally supported this legislation, pulling it off the table to protect the Speaker. And, equally ironic, the Speaker has now provided opponents of the bill, who have contended all along that Congress cannot be trusted to keep secrets, with some powerful ammunition.

Thus, there will be no bill this year. There will be no legislative response in this Congress to the Iran-Contra investigation that occupied us during most of the 1st Session. The systemic weaknesses highlighted by the report of the two investigating committees will remain uncorrected.

But what about the future? Do we let the experience of the Iran-Contra affair go into the history books without our enacting any significant legislative reform?

I hope not. Mr. President, I believe there remains a compelling need for Congress to legislate in this area. The Justice Department has issued a legal opinion which says, in effect, that under current law, the President has "unfettered discretion" in terms of

whether and when Congress will be notified of covert actions. Moreover, the present administration has issued its own policy statement in this regard—National Security Decision Directive 286—which reserves the right to keep Congress in the dark indefinitely with respect to such operations.

As long as these two documents remain as operative policy within the executive branch, I do not see how Congress as an institution can fail to assert its own constitutional prerogatives and responsibilities. While nothing can guarantee that another Iran-Contra affair will not happen, the awareness of Congress of such operations serves as an important and, indeed, the only, external check to ensure that they comport with the laws, policies, and values of our society.

What about the long-term significance of the House inaction? Obviously, the well has been poisoned this year, and the allegations of the Speaker's violation of House rules will be there for opponents to point to in the months and years to come. Nothing will change that unless the House Ethics Committee acts promptly and fairly to deal with the charges.

But as troubling as the Speaker's recent comments may be, they cannot justify Congress' either abdicating, or being denied the means of satisfying, its constitutional responsibilities. There will, regrettably, be aberrations; there will be those who abuse their positions and betray the trust others have placed in them. They should be held accountable and they should be disciplined for their indiscretions.

However, we must not lose sight of the fact that the Constitution explicitly mandates that the Congress will have certain responsibilities in the national security area. We appropriate money for the activities of the executive branch. It is we who declare war, raise armies and navies, advise and consent to the ratification of treaties and the appointment of Ambassadors, and regulate commerce between nations. Implicit in these responsibilities is a consultative role for Congress in the development of foreign policy. The President may be the executor of such policy but its development, I believe, is a shared responsibility under the Constitution.

Furthermore, the Constitution does not condition Congress' role on whether it can be demonstrated that Congress can keep a secret or not. In point of fact, we do have a system in Congress for the protection of sensitive information, and the vast majority of Members abide by it. Despite the recent controversy, I believe Congress has by-and-large shown itself to be a responsible partner in national security matters. But my point is, the Constitution mandates such participation regardless.

And participation is precisely the point of the intelligence oversight bill.

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It requires only that the two intelligence committees be notified of covert actions approved by the President. It does not require that the two committees approve such operations. Paraphrasing what Clark Clifford so aptly stated before the Senate Intelligence Committee, "we want a voice, not a veto." Under present law, Mr. President, the executive branch takes the position that it may deny Congress any voice at all. That is why we need new legislation.

I intend, therefore, to reintroduce this legislation at the beginning of the 101st Congress, and to press vigorously for its enactment. Whether there is a Republican or Democratic administration in place next January 20, we as a coequal branch of Government have an obligation to ensure that our institutional prerogatives and responsibilities are preserved. I hope my colleagues will continue to recognize the necessity of this course of action and will support enactment of this legislation in the next Congress. ●

● Mr. BOSCHWITZ. Mr. President, throughout my long involvement in agricultural issues, I have pushed farmers—dairy farmers in particular—to be more aggressive and innovative in their approach to the marketplace. That is particularly true in dairy, and I saw with a small measure of pride that more aggressive marketing on the part of the dairy industry has led to an increased consumption of dairy products.

Today I want to present my colleagues with another example of innovation that has the potential to be of some assistance in the agricultural sector.

Recent technology has made possible the production of printing ink, made from a base of soybean oil. This presents our Nation's soybean producers with the potential to develop a large and previously untapped market.

A number of publications around the country are already using soy-based ink, and they report several advantages, including brighter, more vivid colors. Most importantly, however, may be the fact that soy-based ink is much more environmentally sound than traditional petroleum-based inks.

Currently, printers must treat wasted ink as a hazardous waste, and follow appropriate procedures in its disposal. Soy-based inks have no such problem.

Printers also report that a pound of soy ink prints more than a pound of traditional ink, and they are less likely to rub off on readers' hands.

Several publications in Minnesota, including Minnesota Agriculture, Agri-news, and the Farmer are currently using soy ink. I would like to challenge the soybean industry to begin a more aggressive promotion of the product, and challenge the printing industry as well to give this product a chance. For environmental reasons, as well as the boon it would provide our soybean producers, soy ink makes sense. ●

# REAUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION

● Mr. D'AMATO. Mr. President, as we near adjournment of this session of Congress, I would like to draw attention to important legislation that we have not addressed. For the seventh consecutive year, Congress has failed to enact legislation reauthorizing the Consumer Product Safety Commission [CPSC].

CPSC is miniscule in size, but has a major mission. With a fiscal year 1989 budget of \$34.5 million and 530 people, this agency is responsible for protecting all Americans from unreasonable risks of injury and death potentially presented by 15,000 consumer products. Each year there are 28,000 deaths and 32 million injuries associated with consumer products. These injuries cost us an annual \$10 billion in emergency room treatment alone.

Under its present leadership, the agency has wandered aimlessly, with little sense of direction or commitment to its statutory mandate to protect consumers. The Commission has bungled in its handling of the all-terrain vehicle imminent hazard enforcement action, the most important case in the agency's history. These off-road recreational vehicles has been associated with 1,078 deaths and an estimated 380,000 hospital emergency room treated injuries from 1982-88. Almost half of these deaths and injuries have been to children under 16. There have been 76 deaths in New York, the second highest number for any State.

Last year, CPSC and the industry negotiated a settlement that amounted to a virtual giveaway to the industry. Along with representatives of the American Academy of Pediatrics, the American Public Health Association, Public Citizen, the Consumer Federation of America, the United States Public Interest Research Group, and attorneys general representing 32 States, I appeared in Federal district court before Judge Gerhard Gesell as an amicus curiae. After making several important changes, Judge Gesell allowed the consent decree to become effective. In spite of this settlement, the ATV carnage is continuing and will continue in the foreseeable future.

Senator GORE and I introduced legislation this June, S. 2599, to address the continuing ATV problem. Our legislation would, among other things, provide a mechanism for refunds to consumers who have purchased three-wheeled ATV's and adult sized ATV's used by children under 16.

The House reauthorization bill would have gone a long way toward addressing the ATV debacle and other problems with CPSC. Unfortunately, as time expires in this session of Congress, it is unlikely that we will be able to pass this legislation. Apparently, one reason why we are not going to have CPSC reauthorization this session is a concern expressed over the agency's handling of an enforcement

action against "worm probes," products that use an electric current to drive earth worms to the surface. This is unbelievable, in light of the fact that the reauthorization legislation has absolutely nothing to do with the worm probe matter. In fact, the focus on worm probes is misplaced. The real issue here isn't in getting worms out of the ground, it's in driving the worms out of the rotten apple that CPSC has become.

I can assure you that I will pursue legislation in the next Congress to fill the leadership vacuum at CPSC and provide real protection against the hazards presented by ATV's. Through my membership on the Senate Appropriations Committee, I will closely scrutinize CPSC's activities. I also intend to work with the next administration to help resuscitate this troubled agency so that it once again becomes the effective protector of the consumer that Congress intended. ●

## IGNORING THE ENERGY ISSUE

● Mr. BOSCHWITZ. Mr. President, I rise today to draw the attention of my colleagues to an item titled "Ignoring the Energy Issue," which appears in the October 19 issue of the Washington Post. The article was written by Frank G. Zarb, who was the Federal Energy Administrator from 1974 to 1977.

Mr. Zarb points out that American consumption of oil is up, that we continue to rely heavily on imported oil, and that the burning of fossil fuels is a major contributor to the global warming. He also laments that since we are not in a crisis situation nobody is paying much attention to the ultimate ending—the exhaustion of fossil fuels.

Mr. President, although we all won't concur with every one of Mr. Zarb's recommendations, I hope we all can agree with him in that we should not wait until another energy crisis faces us before developing alternative energy sources and encouraging energy conservation. Additionally, Mr. President, such a policy will reduce the amount of carbon dioxide emissions and help slow global warming.

We need to look toward the future and promote policies that encourage the conservation of energy and the development of cleaner energy technology. I encourage my colleagues to read this article and join me in the 101st Congress to promote such programs.

Mr. President, I ask that the article written by Mr. Zarb be printed in the RECORD following my statement.

The article follows:

[From the Washington Post, Oct. 19, 1988]

IGNORING THE ENERGY ISSUE—HOW SOON WE FORGET

(By Frank G. Zarb)

In less than a month, the campaign will be over, and it appears likely Election Day will arrive with only passing references by both Republicans and Democrats to that "E" word. Energy—an abundance of which at